

Date: 3/16/09

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Sarah Bloom Raskin
Commissioner of Financial Regulation

DUPLICATE

MARYLAND COMMISSIONER OF

FINANCIAL REGULATION

v.

MONTGOMERY CAPITAL

CORPORATION

LICENSEE

* BEFORE D. HARRISON PRATT,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE OF

* ADMINISTRATIVE HEARINGS

* OAH CASE NO: DLR-CFR-76A-08-32245

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PROPOSED DECISION

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STATEMENT OF THE CASE

On July 16, 2008, the Maryland Commissioner of Financial Regulation (the CFR), Department of Labor, Licensing and Regulation (DLLR), charged Montgomery Capital Corporation (the Licensee), a licensed mortgage lender, with violation of section 11-517(a)(5) of the Financial Institutions Article, Annotated Code of Maryland. On August 4, 2008, the CFR referred this matter to the Office of Administrative Hearings (OAH) for a hearing. The CFR delegated to the OAH the authority to issue proposed findings of fact and conclusions of law, and a proposed order.

On December 10, 2008, I held a hearing at the OAH in Hunt Valley, Maryland. Assistant Attorney General Matthew A. Lawrence represented the CFR. No one was present at the hearing

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to represent the Licensee.

I heard this case pursuant to section Md. Code Ann., Fin Inst. § 11-616 (Supp. 2008). Procedure in this case is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2004 & Supp. 2008), OAH's Rules of Procedure, Code of Maryland Regulations (COMAR) 28.02.01, and COMAR 09.01.03.

ISSUES

The issues are:

1. Whether the Licensee violated section 11-517(a)(5) of the Financial Institutions Article by failing to respond to a subpoena issued by the CFR; and if so,
2. What if any sanctions are appropriate.

Exhibits

The CFR submitted the following documents that were admitted into evidence:

- CFR Ex. #1 DLLR Master Record of the Commissioner of Financial Regulation.
- CFR Ex. #2 Letter from Sarfraz Tariq, Vice President of the Licensee, to the CFR, October 10, 2008.
- CFR Ex. #3 Notice of the filing of charges against the Licensee by the CFR, with certified mail receipts attached, July 16, 2008.
- CFR Ex. #4 Copy of the subpoena from the CFR to the Licensee, November 26, 2007.
- CFR Ex. #5 Investigation report of Calvin I. Wink, Jr.

The Licensee did not submit any exhibits.

Testimony

Calvin I. Wink, Jr. (Wink), Certified Investigator for the CFR, testified on behalf of the CFR. No one testified on behalf of the Licensee.

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FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At the time of the allegations giving rise to this case, the Licensee was licensed by the State of Maryland as mortgage lender, having license #8729. This license expired on January 4, 2008.
2. In July 2007, the CFR received a complaint from several people who believed they were victims of a foreclosure rescue fraud. The complaint was filed against Syed Farhat and the Licensee. Mr. Farhat was a manager of two branch offices of the Licensee. One office was located at 7004 Security Blvd., in Windsor Mill, Maryland, and had license #06-9146, and the other office was located at 2 East Rolling Crossroads in Catonsville, Maryland and had license #06-16017.
3. As a result of the complaints, Mr. Calvin Wink Jr., conducted an investigation on behalf of the CFR.
4. On September 17, 2007, Mr. Wink made an unannounced visit to the Windsor Mill branch office and observed that the office had been abandoned. Shortly after this visit, Mr. Farhat resigned his position with the Licensee.
5. Mr. Wink then spoke with Salman Tariq, who is the President of the Licensee. Mr. Tariq informed Mr. Wink that he was closing all of the Licensee's offices except one, that one being located at 7361 Calhoun Place, Suite 320, in Rockville, Maryland.

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6. The investigation by Mr. Wink revealed the following:
 - a. Mr. Farhat and his wife, Misbah Waqar Syed, bought certain foreclosed properties, placing the properties in their names.
 - b. Mr. Farhat and his wife received money from the equity in foreclosed properties once the properties were sold.
 - c. Other employees of the Licensee participated in and received money in this foreclosure process.
 - d. The Licensee received approximately \$46,947.00 from the sale of these foreclosed properties.
7. On September 24, 2007, Mr. Mink spoke with Salman Tariq by telephone. Mr. Tariq stated that he had closed all of the Licensee's offices except the one located in Rockville, Maryland. Mr. Tariq acknowledged that he had failed to notify the CFR of these closures as required.
8. Shortly after the telephone conversation of September 24, 2007, the CFR issued a cease and desist order to the Licensee and requested the return of licenses.
9. On October 10, 2007, the CFR received a letter from Mr. Sarfarz Tariq, brother of Salman Tariq and a vice-president of the Licensee, advising that the Licensee was changing its location from 151 Shelton Road, Piscataway, New Jersey to 525 Milltown Road, Suite 106, North Brunswick, New Jersey. The letter also indicated that the Licensee's two offices in Vienna, Virginia were going to be closed. No licenses were enclosed with this letter. (See CFR Ex. #2).
10. Enclosed with the letter of October 10, 2007, was another letter dated September

20, 2007, advising the CFR of the closure of certain offices in Maryland.¹

11. On November 26, 2007, the CFR issued a subpoena *duces tecum* to the Licensee and Salman Tariq. The subpoena required Salman Tariq to appear before the CFR on December 10, 2007 and to produce at that time the following documents:
 - a. Original licenses for any branches that had been closed.
 - b. Personnel files of Syed Farhat and several other named employees.(See CFR Ex. #4).
12. On December 7, 2007, Salman Tariq spoke with Mr. Wink by telephone and informed him that he did not have the records that had been subpoenaed and that he would not be appearing before the CFR. Mr. Wink reminded Mr. Tariq that he was required to appear in person whether he had the documents or not.
13. Salman Tariq failed to appear on December 10, 2007 and he failed to produce any of the documents requested. He gave no reason for his failure to appear. No one else appeared on behalf of the Licensee.
14. The Licensee was properly notified of the hearing at OAH and failed to appear for this hearing.

DISCUSSION

The Licensee's Failure to Appear at the OAH Hearing

This CFR filed charges against the Licensee by a letter dated July 16, 2008. This letter (charging document) was mailed to the Licensee, by certified mail, return receipt requested, at the Licensee's address of record, 525 Milltown Road, Suite 106, North Brunswick, New Jersey

¹ A copy of this letter was not offered into evidence.

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08902.² The mail receipt was signed by Sohail Tariq and the receipt indicates that this person is an "agent" of the Licensee.

The CFR forwarded this case to the OAH on August 4, 2008. On August 29, 2008, the OAH sent a Notice of Hearing to Salman A. Tariq, President of the Licensee. The Notice of Hearing was mailed by certified mail, return receipt requested, to the Licensee's address of record, 525 Milltown Road, Suite 106, North Brunswick, New Jersey 08902.³ The mail receipt was signed by Sohail Tariq on September 2, 2008. The mail receipt indicates that Sohail Tariq is an "agent" of the Licensee. The Notice of Hearing indicated that a hearing was scheduled for 9:30 a.m. on December 10, 2008 at the offices of the OAH and that failure of the Licensee to appear could result in a decision against the Licensee.

I called this case for a hearing promptly at 9:30 a.m. on December 10, 2008, at which time no one appeared on behalf of the licensee. Assistant Attorney General Matthew A. Lawrence was present on behalf of the CFR and was prepared to go forward with the hearing. I waited 30 minutes to see if a representative of the Licensee would appear and none did.

Based upon the evidence before me, I find that the Licensee and its President, Salman Tariq, were properly served with and were aware of the charging document in this case and the Notice of Hearing scheduling this hearing for 9:30 a.m. on December 10, 2008. Neither the CFR, its attorney, nor the OAH received any word from the Licensee that representatives of the Licensee were unable to be present at the hearing. The Licensee having failed to appear for the hearing after being duly served with notice, the CFR chose to proceed with a hearing on the merits as opposed to the entry of a default order.

² This is also the address provided by the Licensee in its letter of October 10, 2007. (CFR Ex. #2).

³ See footnote two above.

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The Merits

The CFR has the burden of proof, by a preponderance of the evidence, to demonstrate that the Licensee violated the statutory sections at issue. *See, e.g.*, Md. Code Ann., State Gov't § 10-217 (2004); *Comm'r of Labor and Indus. v. Bethlehem Steel Corp.*, 344 Md. 17 (1996). The CFR has charged the Licensee with violation of Md. Code Ann., Fin Inst. § 11-517(a)(5). This section of the code provides:

§ 11-517. Suspension or revocation of license; enforcement of subtitle, regulations, etc.; employment of mortgage originators.

(a) Suspension or revocation of license - In general - Subject to the hearing provisions of § 11-518 of this subtitle, the Commissioner may suspend or revoke the license of any licensee if the licensee or any owner, director, officer, member, partner, stockholder, employee, or agent of the licensee:

...
(5) Otherwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly, fairly, equitably, and efficiently. Md. Code Ann., Fin. Inst. § 11-517(a)(5) (Supp. 2008).

The basis for the charge against the Licensee is that Salman Tariq, President of the Licensee, failed to comply with the subpoena *duces tecum* issued by the CFR on November 26, 2007. This subpoena was mailed to Mr. Tariq at the Licensee's then address of record, 151 Shelton Road, Piscataway, New Jersey 08854. Furthermore, the evidence is clear that Mr. Tariq confirmed receipt of the subpoena when he spoke with Mr. Wink by telephone on December 7, 2007. Although Mr. Tariq indicated in that telephone conversation that he did not have the documents being sought, he still had an obligation to appear before the CFR and he failed to do so.

Pursuant to Md. Code Ann., Fin Inst. § 2-114(b) and 11-515(d), once the complaint was filed against Mr. Farhat, an employee of the Licensee, the CFR had the authority to initiate an

investigation and to issue subpoenas and request documents as part of the investigation. Sections 2-114(b) and 11-515(d) provide as follows:

§ 2-114. Same - Powers of Commissioner; oaths and discovery; order to compel.

(a) Powers of Commissioner - The Commissioner may:

(1) Make public or private investigations as the Commissioner considers necessary to:

(i) Determine whether a person has violated a provision of law, regulation, rule, or order over which the Commissioner has jurisdiction; or

(ii) Aid in the enforcement of a law or in the prescribing of regulations, rules, and orders over which the Commissioner has jurisdiction;

...

(b) Oaths and discovery.- For the purpose of an investigation or proceeding, the Commissioner or an officer designated by the Commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records which the Commissioner considers relevant or material to the inquiry.

§ 11-515. Investigatory powers and duties of Commissioner; complaints.

...

(b) Filing of complaints; investigation of complaints or violations.-

(1) Any person aggrieved by the conduct of a licensee under this subtitle in connection with a mortgage loan may file a written complaint with the Commissioner who shall investigate the complaint.

...

(d) Powers in connection with examination or investigation.- In connection with an examination or investigation made under this section, the Commissioner may:

(1) Examine the books and records of any licensee or of any other person who the Commissioner believes has violated any provision of this subtitle, or any rule or regulation adopted under this subtitle, or of any other law regulating mortgage loan lending in the State;

(2) Subpoena documents or other evidence; and

(3) Summon and examine under oath any person whose testimony the Commissioner requires.

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The CFR had the authority to issue the subpoena of November 26, 2007 and the Licensee had an obligation to comply with the subpoena. The Licensee's failure to comply with the subpoena is a violation of Md. Code Ann., Fin Inst. §11-517(a)(5). In light of the serious charges contained in the complaint against the Licensee's employee, the Licensee's failure to comply with the subpoena, I find, demonstrates bad faith and unworthiness, and may well demonstrate dishonesty. In order to clarify the actions of its employees, the Licensee had an obligation, not only to the government agency but to its customers as well, to assist in the CFR's investigation. Its failure to cooperate in the investigation casts a shadow on the Licensee's integrity and indicates further that its business was not, and would not be in the future, conducted honestly, fairly, equitably, and efficiently. Furthermore, the Licensee's failure to appear at the hearing is simply a continuation of its uncooperative attitude and casts further suspicion upon its integrity and honesty.

Sanctions

According to the CFR, the Licensee's violation is serious and warrants revocation of the Licensee's license and a civil penalty of \$1,000.00.

In determining the amount of financial penalty to be imposed under Md. Code Ann., Fin. Inst. § 11-517(e) (Supp. 2008), the Commissioner is required to consider the following:

- (1) The seriousness of the violation;
- (2) The good faith of the violator;
- (3) The violator's history of previous violations;
- (4) The deleterious effect of the violation on the public and mortgage industry;
- (5) The assets of the violator; and
- (6) Any other factors relevant to the determination of the financial penalty.

Md. Code Ann., Fin. Inst. § 11-517(e) (Supp. 2008).

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The CFR acknowledges that the Licensee has no previous violations. As to the Licensee's assets, the CFR argues that a penalty of \$1,000.00 is not excessive because the Licensee's business involved a considerable volume of mortgage transactions. The Licensee's lack of good faith is evident not only by its failure to comply with the subpoena but its failure to appear at the hearing. I agree that the Licensee's violation is serious because it precludes a complete investigation of charges of fraud and stymies the CFR in its efforts to protect the public as well as the mortgage industry. Frankly, compared to the injury potential to the public, even the maximum penalty of \$1,000.00 is, at worst, but a minor sanction. Therefore, I find that it is appropriate that the Licensee's license be revoked and that a civil penalty of \$1,000.00 be imposed in this matter.

CONCLUSIONS OF LAW

Upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Licensee violated Md. Code Ann., Fin Inst. §11-517(a)(5) (Supp. 2008);

I conclude further, as a matter of law that the Licensee is subject to revocation of its license and a civil penalty of \$1,000.000 for said violation. Md. Code Ann., Fin Inst. § 11-517(e) (Supp. 2008).

RECOMMENDED ORDER

I RECOMMEND that the Maryland Commissioner of Financial Regulation:

ORDER that the Licensee's license as a mortgage lender/broker be revoked;

ORDER that the Licensee be assessed a civil penalty of \$1,000.00 for the violation; and

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ORDER that the records and publications of the Maryland Commissioner of Financial Regulation reflect this decision.

January 20, 2009
Date Decision Mailed

D. Harrison Pratt
D. Harrison Pratt
Administrative Law Judge

Doc #101945